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August 24, 2017

**Via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: American Cable Association Notice of Ex Parte Presentation Re: *Revision of the Commission's Program Access Rules*, MB Docket No. 12-68;**

Dear Ms. Dortch:

On August 22, 2017, Matthew M. Polka, President and Chief Executive Officer, American Cable Association ("ACA"), and the undersigned met with the following individuals from the Office of the Chairman: Matthew Berry, Chief of Staff, and Alison Nemeth, Media Advisor, to discuss the Commission's Further Notice of Proposed Rulemaking ("FNPRM") on amending and clarifying the program access rules<sup>1</sup> to ensure that buying groups have the protection that Congress intended, consistent with ACA's previous filings in this proceeding.<sup>2</sup>

ACA representatives noted that more than 900 small and medium-sized multichannel video programming distributors ("MVPDs") rely upon a single buying group, the National Cable Television Cooperative ("NCTC"), to negotiate the bulk of their programming agreements. Although Congress specified that buying groups used by MVPDs were to be protected from discriminatory treatment by cable-affiliated programmers under the program access rules, the Commission's decades-old definition of the term "buying group" excludes NCTC. As a result, hundreds of small and medium-sized MVPDs that currently rely exclusively on NCTC to negotiate their programming agreements are effectively left unprotected.

Participants pointed out that the Commission's nearly five-year old FNPRM, which was approved with the support of three of the Commission's currently seated members, tentatively concludes that the definition of a buying group should be updated as ACA has requested:

[I]t appears that our existing definition of "buying group" set forth in Section 76.1000(c)(1) does not reflect accepted industry practices and thus may have the unintended effect of barring some buying groups from availing themselves of the protections of the nondiscrimination provision of the program access rules, in contravention of Congress's express

<sup>1</sup> See *Revision of the Commission's Program Access Rules, etc.*, Report and Order in MB Docket Nos. 12-68, 07-18, 05-192, Further Notice of Proposed Rulemaking in MB Docket No. 12-68, Order on Reconsideration in MB Docket No. 07-29, 27 FCC Rcd 12605 (2012) ("FNPRM").

<sup>2</sup> See generally Comments of the American Cable Association, MB Docket No. 12-68 (filed Dec. 14, 2012); Reply Comments of the American Cable Association, MB Docket No. 12-68 (filed Jan. 14, 2013).

intent in enacting Section 628(c)(2)(B) of the Act. We tentatively conclude that we should revise Section 76.1000(c)(1) to require, as an alternative to the current liability options, that the buying group agree to assume liability to forward all payments due and received from its members for payment under a master agreement to the appropriate programmer.<sup>3</sup>

ACA encouraged the Commission to at last bring closure to this proceeding by adopting an Order that (i) updates its definition of a buying group consistent with the FNPRM's tentative conclusion so that NCTC would qualify; (ii) clarifies the standard of comparability for a buying group; and (iii) prevents cable-affiliated programmers from arbitrarily excluding members of buying groups from participating in their master agreements.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross Lieberman", written over a horizontal line.

Ross J. Lieberman

cc (via email): Matthew Berry  
Alison Nemeth

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<sup>3</sup> FNPRM, ¶ 87.